

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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Eugene Jerome Cunningham,

Petitioner,

v.

Charles E. Samuels, Jr., Travis Bragg and
the United States Department of Justice,

Respondents.

) Civil Action No. 9:15-4439-RMG-

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ORDER

This matter is before the Court on the Report and Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 9) recommending that this Court dismiss this petition for mandamus relief without prejudice on motion of the Petitioner. The Court hereby adopts the R & R and dismisses the action without prejudice.

On October 30, 2015, Petitioner filed a *pro se* petition seeking to compel the U.S. Bureau of Prisons to implement a legal aid program at FCI Bennettsville. On November 19, 2015, the Magistrate Judge ordered the case to be brought into proper form by December 14, 2015. Instead, Petitioner filed a motion to dismiss on December 9, 2015. (Dkt. No. 8.) Petitioner’s stated reason for moving to dismiss was that he had not yet exhausted administrative remedies. Although Petitioner’s motion perhaps could be construed as a notice of dismissal under Rule 41 of the Federal Rules of Civil Procedure, as no responsive pleading has been filed, “out of an abundance of caution” the Magistrate Judge entered an R & R on the motion to dismiss, recommending that it be granted and that the case be dismissed without prejudice. No objection to the R & R has been made.

Therefore, the Court hereby **ADOPTS** the R & R, **GRANTS** the motion to dismiss, and **DISMISSES** the case without prejudice.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

January 8, 2016
Charleston, South Carolina